HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.143 OF 2005.
IN
SUMMONS FOR JUDGMENT NO.841 OF 2004
IN
SUM.SUIT NO.3143 OF 2000.

Mr.Nemchand Jakhubhai Vira. ...Plaintiff.

V/s.

Mr.Laxmichand Lalji Poladia. ...Defendant.

Mr. D.H.Mehta i/b Paras Vira, for Plaintiff.

Mr. N.Lapasia i/b Niranjan & co..for Defendant.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 6, 2005

P.C. :-

1. Heard counsel for the parties.

2. Delay in filing affidavit in reply in summons for Judgment is of 57 days. I find substance in the argument canvassed on behalf of the plaintiff that the delay, as is sought to be explained, is for a period after service of summons for Judgment. However, by way of indulgence, I am inclined to condone delay as it is only of 57 days, provided, defendants pay costs.

3. According to the counsel for the defendants

however, there is no outer limit, within which affidavit in reply was to be filed by the defendants, in terms of provisions of High Court rule, in particular 221(ii). In my opinion, however, that rule will not supersede express provision in the Code of Civil Procedure which requires the affidavit in reply to the summons for Judgment to be filed within 10 days from the date of service of documents. It was open for the defendant to file affidavit in reply, before the returnable date. Therefore, the above argument does not commend to me.

4. However, as mentioned earlier by way of indulgence and in the interest of justice, I am inclined to condone delay of 57 days, provided, the defendant pays costs in the sum of Rs.2,500/- to the High Court Legal Service Committee. Cost to be paid on or before 10th June, 2005, failing which, this order will stand recalled, without further reference to the court.

5. The chamber summons is made absolute in terms of prayer clause (a) on the above conditions.